IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1729 of 2002

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRESIDENT/ CHIEF OFFICER & 1 - Petitioner(s)

Versus

RATANSINGH KANJIBHAI BARIYA - Respondent(s)

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Appearance :

NOTICE SERVED for Petitioner(s) : 1 - 2.MR RN SHAH for Petitioner(s) : 1,(MR MUKESH R SHAH) for Petitioner(s) : 2,

RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/01/2006

ORAL JUDGMENT

1. This petition is directed against the award dated 29.6.2001 passed by the Labour Court, Godhra, passed in Reference (LCG) No.477/97 whereby the petitioner was directed to reinstate the respondent without back wages and with notional continuity of service without any monetary benefits.

2. The short facts of the case are that the respondent workman was working as Sweeper in the Dispensary at Godhra as daily wager. He was offered work only as and when work was available. The respondent voluntarily stopped attending duty with effect from 29.10.1990. Thereafter he raised a dispute which was referred to the Labour Court and registered as Reference (LCG) no.477/97. The Labour Court, after hearing the parties, passed the aforesaid award which is challenged in the present petition.

3. Mr.R.N. Shah appearing for the petitioner submitted that the respondent himself stopped coming for duty and he has not completed 240 days in any year. He further submitted that the reference has been preferred almost after six years. He, therefore, submitted that the Labour Court has committed an error in passing the award in question.

4. Though served, none appears for respondent. This matter was listed on 13th December 2005 on which day the matter was adjourned to 27th December 2005. Thereafter the matter adjourned to today. Even today none appears for respondent and therefore the matter is taken up today.

5. As a result of hearing and perusal of the record it is found that the Labour Court has committed an error in coming to the conclusion that the respondent workman has completed 240

days service. In the written submissions the petitioner has pointed out that in the year 1987-88 the respondent had worked for 170 days, in the year 1988-89 he had worked for 169 days, in the year 1989-90 he had worked for 150 days and in the year 1990-91 he had worked for 133 days. Therefore it is clear that the respondent has not completed 240 days in any of the years. The Labour Court has not recorded anything contrary to the aforesaid submission. In that view of the matter it cannot be said that there is breach of provisions of section 25F and 25H of the Act. Apart from that the dispute has been raised after a I am, therefore, of the view that the Labour Court has committed an error in passing the impugned award.

6. In the case of Surendranagar District Panchayat V. Dahyabhai Amarsinh, reported in AIR 2006 SC 110 (=2005(8) SCC 450), it is held that when the workman has failed to discharge his

burden that he was in employment for 240 days during preceding 12 months of date of termination of his service, he is not entitled for protection of section 25F of the act.

7. In the premises aforesaid, this petition is allowed. The impugned award dated 29.6.2001 passed by the Labour Court in Reference (LCG) No.477 of 1997 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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